UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

LARA PEARSALL-DINEEN,
individually and on behalf of
all other similarly situated individuals,

Plaintiffs,

v.

FREEDOM MORTGAGE CORPORATION
,

Defendant.

Case No. 1:13-cv-06836-JEI-JS

MEMORANDUM IN SUPPORT OF JOINT MOTION FOR APPROVAL OF FLSA SETTLEMENT AND DISMISSAL OF CLAIMS

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INTRODUCTION

Plaintiffs, together with Defendant Freedom Mortgage Corporation, bring this motion requesting that the Court (1) approve the parties' settlement of this Fair Labor Standards Act ("FLSA") collective action, including the plaintiff releases associated therewith, and (2) dismiss the action in its entirety. The proposed settlement resolves a *bona fide* dispute concerning overtime wages, and was reached in good faith after a mediation session with a qualified mediator. All parties believe that the settlement is fair and reasonable. For all of the reasons set forth herein, the parties jointly request that their motion for settlement approval and dismissal be granted as set forth in the Proposed Order.

RELEVANT BACKGROUND

I. PROCEDURAL HISTORY

On November 12, 2013, Plaintiff Lara Pearsall-Dineen filed this FLSA collective action lawsuit pursuant to 29 U.S.C. § 216(b), seeking unpaid overtime compensation on behalf of herself and other similarly-situated mortgage underwriters employed by Defendant. (ECF No. 1 (Compl.).) Plaintiff alleged that Defendant failed to pay her and other current and former mortgage underwriters overtime compensation for hours worked in excess of forty hours in a workweek under the FLSA, U.S.C. § 201 et seq. (Id.) Defendant filed its Answer to Plaintiff's Complaint on December 23, 2013, denying the allegations and requests for relief in Plaintiff's Complaint. (ECF No. 22 (Answer).) On June 25, 2014, the Court conditionally certified the case as a collective action upon Plaintiff's motion. (ECF No. 61 (Order Granting Motion to Certify Class).) Notice of the lawsuit was mailed to all putative plaintiffs, and a total of 86 eligible mortgage underwriters ultimately [I thought the use of "subsequently" incorrectly suggested that 86 persons joined during the notice period]joined Ms. Pearsall-Dineen in this

lawsuit (collectively, the "Settlement Class Members"). (ECF Nos. 11, 12, 14, 19, 21, 24, 25, 30, 31, 34, 37, 56, 65, 67, 68, 69, 70, 71, 72, 73, 75, 76, 77, 79, 80, 81, 82, 83, 84, 85, 86, 87.)

After the close of the notice period, the parties notified the Court of their intention to attend a voluntary mediation and requested that the Court stay the action pending the mediation. On November 20, 2014, the Court issued an order approving a joint stipulation to stay the action until January 22, 2015. (ECF No. 92 (Joint Stipulation and Order to Stay Action).) On January 8, 2015, the parties held a mediation session with the Honorable Kathleen Roberts (Ret.), and were able to reach a tentative settlement. (Srey Decl. ¶ 3.)

II. THE SETTLEMENT

A. The Settlement Amount, Allocation, and Distribution

Following mediation, the parties drafted and executed a Settlement Agreement ("Agreement"), attached as Exhibit A to the Declaration of Rachhana T. Srey. Under the terms of the Agreement, Defendant will pay $900,000 inclusive of attorneys' fees and costs. (Srey Decl. ¶ 4, Ex. A at 3.)

Plaintiffs' Counsel allocated the total settlement amount as follows. Consistent with Plaintiffs' contingency fee agreements with Plaintiffs' Counsel, attorneys' fees in the amount of $300,000, and litigation costs in the amount of $19,054.24 were deducted from the total settlement amount. (Id. ¶ 4, Ex. A at 3.) Additionally, $3,000 was allocated to Ms. Pearsall-Dineen in recognition of her time and effort assisting with and securing the settlement and serving the collective group. (Id.) Finally, $5,000 was allocated to a contingency fund which was to be used to further the purposes of the Agreement. (Id.)

The remainder of the settlement amount, $572,638.18, was allocated to each of the 87 Plaintiffs within the scope of the settlement class (as defined in Section 2 of the Agreement).

(Srey Decl. ¶ 5, Ex. A at 3.) The pro rata share of the settlement was based on a formula that took into consideration the following factors: (1) each Plaintiff's dates of employment during the two-year and three-year statute of limitations period; (2) each Plaintiff's compensation and time records during the same statute of limitations; and (3) each Plaintiff's estimated number of unpaid overtime hours per week with a uniform cap of 10 hours per week. (Id. ¶ 5.)

The parties agreed that the total settlement amount would be disbursed by Defendant in three installments. (Srey Decl. Ex. A at 4–5.) Specifically, Defendant is required to pay the first installment, consisting of the W-2 portion of each Settling Plaintiff's settlement amount, 15 days after the Court approves the settlement. (Id. at 4.) Defendant is to pay the second installment, consisting of the 1099 portion of each Settling Plaintiff's settlement amount, 45 days after Court approval. (Id. at 5.) Defendant is to pay the third and final installment, consisting of attorneys' fees, costs, and any other remaining funds from the total settlement amount, 75 days after Court approval of the settlement. (Id.)

Each Settling Plaintiff participating in the settlement will be given 120 days after the issuance of the settlement checks to cash their checks. (Id. Ex. A at 5–6.) At the conclusion of the 120-day period, any uncashed checks will be voided and the check amount will be donated to charity. (Id. at 6.)

B. Notice Procedure and Participation

The parties agreed that each of the 87 Plaintiffs included within the scope of the settlement class would be given an opportunity to accept or reject their individual settlement offer. (Srey Decl. Ex. B (Sample Notice of Settlement and Release of Claims Form).) Plaintiffs' Counsel mailed the Notice of Settlement and Release of Claims Form to each of the 87 Plaintiffs on February 13, 2015. (Id. ¶ 6.) Each Notice of Settlement included that particular Plaintiff's

individual settlement allocation. (Id.) Since the Notice was mailed, Plaintiffs' Counsel has been available to Plaintiffs to answer any questions about the settlement, the individual allocations, and timing of payments. (Id. ¶ 6, Ex. B at 3.)

Plaintiffs had until March 30, 2015 to respond to the Notice of Settlement. (Srey Decl. ¶ 7, Ex. B at 2.) Plaintiffs' Counsel made diligent efforts to obtain timely responses from each Plaintiff via email and telephone. (Id. ¶ 8.) Of the 87 Plaintiffs, 85 accepted their offers and returned an executed Release of Claims form and are therefore considered "Settling Plaintiffs" per Section 3(b) and 8(a) of the Agreement. (Id. ¶ 9, Ex. A at 3–5.) None of the 87 Plaintiffs decided to "reject" Defendant's settlement offer and two of the 87 Plaintiffs neither returned a Release of Claims Form nor rejected their settlement offer and are therefore considered nonresponsive under the terms of the Agreement, Section 8(b), (c). (Id. ¶ 9, Ex. A at 5.)

C. The Release of Claims

In consideration for the total settlement payment from Defendant, the Settling Plaintiffs were required to return a Release of Claims Form. (See Srey Decl. Ex. A at 5, Ex. B.) As mentioned above, 85 of the 87 Settlement Class Members executed and returned a Release. (Id. ¶ 9.) Their claims will be dismissed with prejudice. (Id. Ex. A at 5, Ex. B at 4.) The two non-responsive Settlement Class Members' claims will be dismissed without prejudice and their settlement allocations will be reallocated pro rata to the Settling Plaintiffs. (Id. ¶ 9, Ex. A at 5.) The Release of Claims Form releases Defendant and other Releasees[1] from:

> [A]ny and all Fair Labor Standards Act ("FLSA") and analogous state wage and hour claims related to overtime compensation which the Releasers, or any of

[1] "Releasees" includes Freedom Mortgage Corporation, its present or former officers, directors, subsidiaries, affiliates, partners, employees, agents, attorneys, accountants, executors, administrators, personal representatives, heirs, successors and assigns, and any or all of them and all persons acting by, though, under, or in concert with any of them. (Ex. B.)

> them, may assert anywhere in the world against the Releasees, or any of them, relating to FLSA violations or similar wage and hour claims under state law related to overtime compensation, liquidated damages, penalties and interest claims arising up to and including January 8, 2015.

(Id. Ex. B.)

LEGAL ANALYSIS

I. JURISDICTION AND VENUE

This Court has subject matter jurisdiction over this action and personal jurisdiction over Defendant, and venue is proper. An FLSA action shall be brought in a federal or state court of competent jurisdiction. 29 U.S.C. § 216(b). This action was filed in the United States District Court for the District of New Jersey pursuant to the Court's federal question jurisdiction, 28 U.S.C. § 1331, for claims arising under the FLSA. (See Compl. ¶ 1.) Venue was appropriate in this District. (See Compl. ¶ 2.)

II. THE PROPOSED SETTLEMENT APPROPRIATELY RESOLVES THE PARTIES' CLAIMS AND DEFENSES

A. Standard for Approval of Settlement of FLSA Collective Actions

FLSA claims may only be compromised by the Department of Labor ("DOL") or through a judicially-approved stipulated settlement. See D.A. Schulte, Inc. v. Gangi, 328 U.S. 108, 116 (1946); Brooklyn Savings Bank v. O'Neil, 324 U.S. 697 (1945); Brumley v. Carmin Cargo Control, Inc., 2012 WL 1019337, at *1 (D.N.J. Mar. 26, 2012).

Where a district court is asked to approve a settlement, "the Court must scrutinize the agreement for reasonableness and fairness." Singleton v. First Student Mgmt. LLC, 2014 WL 3865853, at *7 (D.N.J. Aug. 6, 2014). The district court may enter a stipulated judgment if it determines that the compromise reached "is a fair and reasonable resolution of a *bona fide* dispute over FLSA provisions." Brumley, 2012 WL 1019337, at *2 (citing Lynn's Food Stores,

Inc. v. U.S., 679 F.2d 1350, 1353 (11th Cir. 1982)). Recognizing that the Third Circuit has not directly addressed the factors to be considered in deciding motions for approval of FLSA settlements, courts in this District typically analyze the factors set forth in Lynn's Food. Singleton, 2014 WL 3865853, at *7–8; Morales v. PepsiCo, Inc., 2012 WL 870752, at *1 (D.N.J. Mar. 14, 2012); Brumley, 2012 WL 1019337 at *2; Bredbenner v. Liberty Travel, Inc., 2011 WL 1344745, at *18 (D.N.J. Apr. 8, 2011).

Under Lynn's Food, the primary consideration in determining whether a settlement is fair and reasonable is the strength and nature of the claims in light of the possible defenses. Lynn's Food, 679 F.2d at 1353. District courts in this Circuit apply the following factors when considering the fairness of a proposed settlement of an FLSA collective action: (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) stage of the proceedings and the amount of discovery completed; (4) risks of establishing liability; (5) risks of establishing damages; (6) risks of maintaining the class action through the trial; (7) ability of the defendant to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. See Singleton, at *5–*6, *8 (D.N.J. Aug. 6, 2014) (outlining the factors for evaluating settlements in Rule 23 class actions as set forth in Girsh v. Jepson, 521 F.2d 153, 157 (3d Cir. 1975) and explaining that Third Circuit courts typically apply the Girsh factors when evaluating FLSA settlements); Brumley, 2012 WL 1019337, at *4–*5 (applying the Girsh factors to evaluate the fairness of a proposed FLSA settlement). As a general rule, "[w]hen a settlement agreement has been the subject of arms-length bargaining, with class counsel in a position to evaluate accurately the chances of the class prevailing if the case went to trial and where no

objections are raised by any of the affected parties, there is a strong presumption in favor of the settlement." Houston v. URS Corp., 2009 WL 2474055, at *5 (E.D. Va. Aug. 7, 2009).

B. The Proposed Settlement Is Fair and Reasonable

1. A *Bona Fide* Dispute Exists Between the Parties

A *bona fide* dispute exists "when an employee makes a claim that he or she is entitled to overtime payment," and when settlement requires resolution of the "number of hours worked or the amount due." Id. at *9. In determining whether a *bona fide* dispute exists, a court must "ensure that the parties are not, via settlement of the plaintiffs' claims, negotiating around the clear FLSA requirements of compensation for all hours worked, minimum wages, maximum hours, and overtime." Collins v. Sanderson Farms, Inc., 568 F. Supp. 2d 714, 719 (E.D. La. 2008); see also Singleton, 2014 WL 3865853, at *8.

A *bona fide* dispute clearly exists in this case. Plaintiffs claim that they were not properly paid all of their overtime pay. Defendant denies that it violated the FLSA or any other law and specifically denies that Plaintiff and similarly situated mortgage underwriters are owed any additional overtime under the FLSA. Although both parties continue to firmly believe in the merits of their respective claims and defenses, given the time and expenses associated with full-blown litigation and discovery, the uncertainty of motion practice and trial, the risk of significant delay, the ability to collect a judgment if one is obtained, the ability of Defendant to pay a greater judgment if one is obtained, and the ability of Defendant to pay a settlement in one lump sum, the parties agree that a compromise consisting of the proposed payment schedule is appropriate at this stage of the litigation. The parties desire to resolve this case by way of a negotiated settlement payment in three installments by Defendant to Plaintiffs, in exchange for the release of claims by Plaintiffs in order to avoid the time and expense inherent in continued litigation.

See Lynn's Food, 679 F.2d at 1354 ("Thus, when the parties [to litigation] submit a settlement to the court for approval, the settlement is more likely to reflect a reasonable compromise of disputed issues than a mere waiver of statutory rights brought about by an employer's overreaching.").

2. The Settlement Is the Product of Good Faith, Arms-Length Negotiations by Experienced Counsel

The settlement was reached as a result of extensive arms-length negotiations between the parties through participation by counsel in a mediation with a qualified mediator, the Honorable Kathleen Roberts (Ret.). (Srey Decl. ¶ 3.) Judge Roberts has many years of experience in mediating FLSA cases. (Id. Ex. C.)

Plaintiffs' Counsel has the experience to assess the risks of continued litigation, particularly the ability to collect even if a judgment were obtained, and benefits of settlement. See Moore v. Ackerman Inv. Co., 2009 WL 2848858, at *3 (N.D. Iowa Sept. 1, 2009). Plaintiffs' Counsel has a long-standing national practice representing employees with claims against employers similar to the claims asserted in this case. See generally http://www.nka.com/ (counsel's website); Srey Decl. ¶ 10, Ex. D. Defense counsel is likewise experienced in defending against similar claims. Counsel for both sides have advised their respective clients regarding the settlement, and have recommended judicial approval thereof; this Court should afford that recommendation some weight. See Houston, 2009 WL 2474055, at *7.

3. This Case Has Advanced To a Stage at Which the Risks of Continued Litigation Can Be Assessed

The parties had an opportunity to engage in substantial litigation before settling this case. Plaintiff's Motion for Conditional Certification was fully briefed by the parties and heard by the Court. Additionally, the parties exchanged some written and document discovery prior to the

action being stayed. Without question, had the action not been stayed and had mediation not been successful, the parties would have spent significant additional time and resources completing written and deposition discovery, including depositions of representative sample Plaintiffs, and corporate and fact witnesses. Thereafter, the parties would have likely litigated a motion for decertification and filed dispositive motions.

In short, the proceedings had advanced to a stage sufficient to permit the parties and their counsel to collect, obtain, and review evidence, evaluate their claims and defenses, assess their witnesses, understand the scope of potential damages, and engage in negotiations with the mutual understanding that continuing toward additional formal discovery, decertification, and dispositive motion practice would be a difficult, costly, and uncertain undertaking. Based on that analysis, the parties believe that settlement on the terms set forth in the Agreement is in their mutual best interests.

4. No Plaintiffs Rejected the Settlement, and Over 97 Percent of the Plaintiffs Have Accepted the Settlement

Finally, the reaction of the Plaintiffs to the settlement also supports a finding that the settlement is fair and reasonable. None of the 87 Plaintiffs included within the scope of the settlement class has rejected his or her individual settlement offer. In fact, 85 of the 87 Plaintiffs within the settlement class have accepted the settlement offer and executed and returned a Release of Claims Form. And, despite all of Plaintiffs' Counsel's efforts, which included repeated emails and telephone calls, two Plaintiffs took no affirmative action and neither accepted nor rejected their individual settlement offer. (Srey Decl. ¶ 9.) Under the terms of the Agreement, these Plaintiffs are considered "Non-Responders," and shall be dismissed from the action *without* prejudice. (Id. Ex. A at 5.) The individual settlement offers of these two Non-Responders will be re-allocated to Settling Plaintiffs in the final allocation. (Id. Ex. A at 4, 5.)

The fact that all responsive Plaintiffs (97.7 percent of the Settlement Class) accepted their individual settlement offer is further evidence of the settlement's reasonableness.

C. Plaintiffs' Counsel's Fees and Costs are Reasonable

As mentioned above, Plaintiffs' Counsel deducted $300,000 from the $900,000 total settlement amount as attorneys' fees, which represents one-third (33.33% percent) of the settlement fund. Plaintiffs' counsel is requesting that the Court approve this amount as reasonable for attorneys' fees.

Under the FLSA, the court "shall in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action." 29 U.S.C. § 216(b). "In FLSA cases, judicial approval of attorneys' fees is necessary "to assure both that counsel is compensated adequately and that no conflict of interest taints the amount the wronged employee recovers under a settlement agreement." Singleton, 2014 WL 3865853, at *9. What constitutes a reasonable fee is within the sound discretion of the district court. Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). A critical factor in determining the reasonableness of an attorneys' fees award is the success of the litigation. Id. at 436.

In the Third Circuit, "both the lodestar formula and the percentage-of-recovery method have been used in evaluating the reasonableness of attorneys' fees." Singleton, 2014 WL 3865853, at *10 (comparing Loughner v. Univ. of Pittsburgh, 260 F.3d 173, 177 (3d Cir. 2011) (using lodestar formula), with Brumley, 2012 WL 1019337, at *9 (using percentage-of-recovery method)); see also In re Diet Drugs Product Liab. Litig., 582 F.3d 524, 540 (3d Cir. 2009) (approving district court's use of percentage-of-recovery method while noting that lodestar method is also acceptable); In re AT & T Corp., 455 F.3d 160, 164 (3d Cir. 2006). Per the common fund doctrine, "a private plaintiff, or plaintiff's attorney, whose efforts create, discover,

increase, or preserve a fund to which others also have a claim, is entitled to recover from the fund the costs of [the] litigation, including attorneys' fees." In re Cendant Corp. Sec. Litig., 404 F.3d 173, 187 (3d Cir. 2005) (quotation omitted). Courts in this Circuit have favored the percentage-of-recovery method in wage-and-hour cases where a common fund is established. See, e.g., Bredbenner, 2011 WL 1344745, at *19; Chemi v. Champion Mortg., 2009 WL 1470429, at *10 (D.N.J. May 26, 2009).

In determining what constitutes a reasonable percentage fee award in an FLSA case, courts in this Circuit consider several factors including: (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) the awards in similar cases. See Brumley, 2012 WL 1019337, at *3, *9–*12 (citing Gunter v. Ridgewood Energy Corp., 223 F.3d 190, 195 (3d Cir. 2000); Krell v. Prudential Ins. Co., 148 F.3d 283, 342 (3d Cir. 1998)); Bredbenner, 2011 WL 1344745, at *19.

The settlement in this case creates a common fund of $900,000 for the 87 Plaintiffs. Plaintiffs' Counsel's work on this case resulted in settlement offers to each of the 87 Plaintiffs who would likely have received nothing in the absence of Plaintiffs' Counsel's efforts. Plaintiffs' Counsel secured what they believe to be a fair and reasonable settlement and payment schedule in light of disputed liability and damages issues, the risk of significant delay, the defenses asserted by Defendant, and the ability of Defendant to pay a judgment if one is obtained or to pay a settlement in one lump sum.

Plaintiffs in this case are being represented by Plaintiffs' Counsel on a contingency basis, and the requested fees and costs reflect the terms of that agreement. (Srey Decl. ¶ 12.) Those legal services agreements provide for payment of attorneys' fees to Plaintiffs' Counsel in the amount of one-third of any settlement. (Id.) Because of this contingency fee arrangement, Plaintiffs' Counsel has not received any payment for their time spent litigating the case, nor have they received reimbursement for their out-of-pocket costs during the litigation. (Id.) Instead, Plaintiffs' Counsel alone shouldered the financial risk of recovering nothing for their time and resources spent litigating the case. Because Plaintiffs' Counsel litigated this case aggressively and effectively, they were able to obtain settlement amounts for 87 Plaintiffs by investigating Plaintiffs' claims and gathering the necessary information regarding the merits of Plaintiffs' claims and Defendant's defenses. This contingency fee agreement should be honored. See Brumley, 2012 WL 1019337, at *10 (noting that common fee arrangements agreed to by plaintiffs have been found to be presumptively reasonable); Scott v. Memory Co., LLC, 2010 WL 4683621 (M.D. Ala. Nov. 10, 2010) (settlement approved with attorneys' fees paid according to plaintiff's contingency agreement with his attorney).

Further, one-third of the total settlement is a common award for attorneys' fees in FLSA collective action cases such as this. See, e.g., Brumley, 2012 WL 1019337, at *12 (noting that the plaintiffs' counsel's request for one-third of the settlement fund falls within the range of awards granted in other similar cases); Heath v. Hard Rock Cafe Int'l (STP), Inc., 2011 WL 5877506, at *3 (M.D. Fla. Oct. 28, 2011) (approving fees request of $33.33% of the total settlement amount in FLSA action); Burkholder v. City of Ft. Wayne, 750 F. Supp. 2d 990, 997 (N.D. Ind. 2010) ("a counsel fee of 33.3% of the common fund 'is comfortably within the range typically charged as a contingency fee by plaintiffs' lawyers' in an FLSA action"); Faican v.

Rapid Park Holding Corp., 2010 WL 2679903 (E.D.N.Y. July 1, 2010) (approving fee award of 33 1/3 percent in an FLSA action); Wineland v. Casey's Gen. Stores, Inc., 267 F.R.D. 669, 677 (S.D. Iowa 2009) (approving an attorney fee award of 33.33% of settlement fund in an FLSA wage and hour action); In re Safety Components, Inc. Sec. Litig., 166 F Supp. 2d 72, 102 (D.N.J. 2001) (granting award of 33 1/3% in common fund case and citing to ten cases from Third Circuit doing the same). The Notice of Settlement advised Plaintiffs of Plaintiffs' Counsel's one-third fee request from the settlement fund. (Srey Decl. Ex. B.) No Plaintiff objected to the terms of the settlement providing for Plaintiffs' Counsel to receive one-third of the settlement fund. This too should weigh in favor of the reasonableness of the requested attorneys' fees. See Brumley, 2012 WL 1019337, at *10 (concluding that "[t]he absence of objections" to the settlement from plaintiffs "indicates that the settlement terms and the attorneys' fees are reasonable").

Plaintiff's Counsel's request for attorneys' fees is also reasonable in light of the lodestar cross-check. Based on a preliminary analysis, Plaintiffs' Counsel estimates that their attorneys' fees request of $300,000 is approximately 1.44 times the lodestar fee amount of approximately $207,552.50.[2] (Srey Decl. ¶ 13.) This is a reasonable multiplier and supports approval of the settlement. See In re Cendant Corp. PRIDES Litig., 243 F.3d 722, 742 (3d Cir. 2001) (approving lodestar cross-check multiplier of 3 in a "relatively simple" case that carried no risks as to liability); In re Prudential Ins. Co. America Sales Practice Agent Actions, 148 F.3d 283, 318 (3d Cir. 1998) (noting, based on a review of common fund cases, that "[m]ultipliers ranging

[2] An itemization of Nichols Kaster, PLLP's fees is attached to the Declaration of Rachhana T. Srey as Exhibit E. Of the $207,552.50 in attorneys' fees expended on this case, $3,325.00 were incurred by Plaintiffs' New Jersey Counsel, Schall & Barasch.

from one to four are frequently awarded in common fund cases, when the lodestar method is applied"); Bredbenner, 2011 WL 1344745, at *21 (performing a lodestar crosscheck and finding that a the plaintiffs' counsel's fee request of 1.88 times the lodestar was "quite reasonable"). Additionally, Plaintiffs' Counsel will continue to incur fees over the over the next several months as they will be administering the settlement and disbursing the checks to the Settling Plaintiffs. (Srey Decl. ¶ 12.)

Plaintiffs' Counsel has significant FLSA experience, particularly in cases involving unpaid overtime compensation for mortgage underwriters and loan officers. Ms. Srey is Partner at Nichols Kaster, PLLP ("Nichols Kaster"), one of the premier wage and hour law firms in the country. (Srey Decl. ¶¶ 1, 10; Ex. D.)[3] Ms. Srey has been licensed and has worked for Nichols Kaster since 2004. (Id. ¶ 11.) During this time, her practice has focused primarily on large wage and hour class and collective action cases. (Id.) She has tried three FLSA collective actions, one of which resulted in a $3.8 million judgment against the employer.[4] (Id.) Ms. Srey has handled dozens of wage and hour cases during her legal career, is a frequent speaker nationally and locally on wage and hour topics, and has authored several written materials on wage and hour issues. (Id.) Awarding Plaintiffs' Counsel the requested attorneys' fees amount is appropriate in light of Plaintiffs' Counsel's skill and diligent effort in reaching a favorable settlement for all Plaintiffs.

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[3] Exhibit D is Nichols Kaster, PLLP's firm's resume.

[4] This case, Monroe v. FTS USA, LLC and Unitek USA, LLC, Court File No. 08-cv-02100 (W.D. Tenn.) spent years in post-trial motion practice. Plaintiffs prevailed on all post-trial motions and Defendant recently filed its Sixth Circuit appeal brief. Needless to say, despite obtaining an excellent result for the plaintiffs in that case, neither they nor Plaintiffs' Counsel have been paid. (Srey Decl. ¶ 11.)

In addition to the attorneys' fees, the settlement also provides for the recovery of $19,054.24 in litigation expenses, which Plaintiffs' counsel advanced with the risk of no recovery. See Chemi, 2009 WL 1470429, at *13 (acknowledging that in common fund cases, counsel is "entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the case"). Further, the scope of reasonable expenses in a case such as this is broad. Id. at *13 (approving plaintiffs' counsel's out-of-pocket expenses as reasonable even though the summary of expenses submitted by plaintiffs' counsel was not considerably detailed). Here, an itemization of Plaintiffs' Counsel's costs is attached to the Declaration of Rachhana T. Srey as Exhibit F. These out-of-pocket expenses were appropriately incurred in the prosecution of this case, and should be approved as reasonable.

D. The Court Should Approve Service Payment to the Named Plaintiff

Under the terms of the Agreement, in addition to her individualized allocation from the gross settlement fund, and subject to Court approval, the original Named Plaintiff Pearsall-Dineen will receive an additional award of $3,000 in recognition of her efforts in litigating this case and assistance in securing the settlement in this lawsuit.

Courts have approved recognition payments if they are fair and reasonable. Chemi, 2009 WL 1470429, at *13 (finding that incentive awards of $5,000, $3,000, and $1,000 for various plaintiffs were reasonable in light of the considerable time that the lead plaintiffs invested in the case); Risch v. Natoli Engineering Co., LLC, 2012 WL 3242099, at *3 (E.D. Mo. Aug. 7, 2012) (finding $5,000.00 incentive payment to named plaintiffs fair and reasonable in wage and hour class and collective action); Torres v. Gristede's Operating Corp., 2010 WL 5507892, at *7

(S.D.N.Y. Dec. 21, 2010) (awarding an incentive award of $15,000 to each named plaintiff in the settlement of their FLSA overtime claim).

Here, a $3,000 service payment to this one individual is modest, fair, and reasonable. The Named Plaintiff's efforts in bringing this lawsuit and assisting Plaintiffs' Counsel with the investigation of Plaintiffs' claims and advancing the litigation conferred a substantial benefit on all Plaintiffs. This service payment is reasonable and appropriate given its modest size, representing only one-third of one percent of the total amount of the settlement. Defendant does not oppose the award of this service payment.

CONCLUSION

This FLSA collective action settlement is a product of an arms-length negotiation between counsel that has resolved a *bona fide* dispute concerning overtime wages. The settlement is fair and reasonable and provides the Settling Plaintiffs with meaningful monetary relief. Further, under the terms of the Agreement, the two (2) Plaintiffs who have failed to respond to the notice of settlement are not prejudiced because their claims will be dismissed *without* prejudice. For these reasons, and those set forth above, the Court should approve the parties' Agreement and dismiss this action, with prejudice, consistent with the Proposed Order submitted herewith.

Dated: April 15, 2015

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